**Company formation**

To form a company limited by shares, the promoters (e.g. an investment bank, underwriting co) must complete and submit Form 201 and pay the required fee to ASIC.

Once ASIC is satisfied that all requisite requirements are fulfilled, a Certificate of Incorporation is issued and the company is now a separate legal entity.

Information to be submitted

* Name of company
* Registered office
* Place of business if different from registered office
* Name and consent of initial shareholders, directors and company secretary
* Rules selected to govern the company – Constitution and/or replaceable rules

**Internal management**

The company will be managed internally under a set of rules.

Three possibilities:

**1 Replaceable Rules** – set of rules from S 141 Corporations Act 2001.

**2 Constitution** – set of rules developed by the company.

**3** A **combination** of replaceable rules and a constitution.

**Replaceable Rules**

The Corporations Act contains a set of rules, known as replaceable rules, which can be used to govern the internal management of a company.

Using replaceable rules saves the company from making Constitution updates every time the law relating to company operations changes.

Replaceable rules automatically apply to a proprietary company unless they are replaced in some form by a Constitution.

The constitution/replaceable rules of a company broadly covers matters, such as, the

* appointment, powers and remuneration of directors
* terms and conditions of office of company secretary
* procedures for calling and running meetings of shareholders or directors.
* Shares –different classes, transfer and dividend rights

###### Constitution

###### The constitution (and any replaceable rules that the company has chosen to retain) is a contract between the company, the shareholders and the directors.

###### All parties agree to follow the rules set out in the constitution.

Public companies must lodge their constitution with ASIC. Proprietary companies need not, but must make it available if requested.

**Share**

**Prospectus**

A prospectus is a disclosure document, issued by a public company, inviting the public to purchase the shares or debentures of that company. This gives potential investors a chance to consider their options before committing their scarce resources to the company.

A prospectus generally contains

* Past financial information.
* Future financial information (budgets – what will the money be raised for)
* Personal details of directors
* Detailed information about the proposed issue, how much must be paid by what date.
* an application form that investors wishing to apply for the shares must complete and return to the company.

The content is prescribed by Corporations Act and ASX Listing Rules.

**Preference Shares (not in the syllabus, just for information)**

3 types of preference shares:

1. Cumulative Preference Shares

If the dividend cannot be paid in any one year it accumulates to the next year. The dividend continues to accumulate, year after year, until it is paid. Cumulative preference shareholders are entitled to be paid their dividend arrears before the ordinary shareholders receive any dividend.

Preference shares are presumed to be cumulative if the constitution of the company is silent on this matter.

1. Non-Cumulative Preference Shares

The owners of these shares have the right to a fixed rate of dividend. If the dividend is not paid in any one year it does not accumulate to the next year.

1. Participating Preference Shares

The owners of these shares have a right to a fixed rate of dividend and if the ordinary shareholders receive a dividend above a pre-determined rate, the participating preference shareholders are entitled to a further dividend.

**Shareholders**

*How does an individual become a shareholder in a company?*

An individual may become a shareholder of a company by

* being listed as a shareholder of the company in the application for registration, or
* by the company issuing shares to the person, or
* by purchasing shares from an existing shareholder and the company registering the transfer.

*How does an individual cease to be a shareholder in a company?*

An individual ceases to be a shareholder if

* they sell all their shares and the company registers the transfer of the shares, or
* the company buys back all the person’s shares, or
* ASIC cancels the company’s registration.

**Rights of shareholder**

1. Access to company information

* Shareholders may inspect the company share register at the company’s registered office.
* Members of small proprietary companies, with 5% votes can request a copy of the financial report.
* All public company members have a right to receive financial reports 21 days before AGM.

1. Returns to shareholders

Shareholders get a return in 3 ways:

* *Dividends*
  + Profit is distributed from after-tax profit.
* *Buy back of shares*
  + Company buys shares back from the shareholder (redemption)
* *Winding up*
  + When company is wound up shareholders can claim remaining assets after repayment of creditors

Distributions can only be made if the company is firstly able to pay debts, if not directors will be liable to pay compensation and incur civil and criminal penalties.

1. Voting rights

Shareholders vote on resolutions which are formal decisions. Usually one vote is available for each share.

*Ordinary resolutions* require a simple majority of 50% of members present.

Examples of decisions requiring ordinary resolutions:

* Election of directors
* Appointment of auditors
* Acceptance of AGM reports

*Special resolutions* are passed when at least 75% of members present vote on it.

Members must be sent notification of a special resolution at least 28 days (for a listed company) or 21 days before the meeting to vote on the resolution.

Examples of decisions requiring special resolutions:

* Modifications of constitution
* Changes to share rights
* Winding up

**Share issue costs**

* These include items like stamp duties, taxes, underwriting costs and brokerage fees and the cost of printing the prospectus.
* Accounting standards state that these are neither assets nor expenses but rather a *deduction from equity*.

**Rights issue**

* A company may have a cash issue, where only *existing shareholders* have the *right* to subscribe.
* This enables them to maintain their existing proportion of ownership. For example, the rights issue may give them the right to subscribe 1 share for every 4 now held.
* It is priced at *below current market value* to make it more attractive to existing shareholders.
* A rights issue is less costly to the company because there are minimal share issue costs.